

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4 Plaintiff

5 v.

6 CRIMINAL 08-0074 (JAG)

7 MAGDA ROSADO-GARCÍA,

8 Defendant

10 MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
11 RE: RULE 11(c)(1)(B) PROCEEDINGS (PLEA OF GUILTY) AND WAIVER
12 OF INDICTMENT AND AGREEMENT TO PROCEED BY INFORMATION

13 I. Personal Background

14 On October 10, 2007, Magda Rosado-García, the defendant herein, was
15 charged in a two-count indictment. The defendant agrees to plea guilty to count one
16 of the information filed today in court and given the number 08-0074 (JAG).

17 Count two charges that the defendant, having knowledge of the commission
18 of a felony cognizable by a court of the United States, to wit, the possession with
19 intent to distribute and distribution of narcotics in violation of 21 U.S.C. §
20 841(a)(1) as charged in Criminal 07-0417 (JAG), did conceal such facts and did not
21 make the same known to some judge or other person in civil authority under th
22 United States. All in violation of 18 U.S.C. § 4.

23 II. Consent to Proceed Before a Magistrate Judge

24 On March 11, 2008, while assisted by Ernesto Hernández, Esq., the defendant,
25 by consent, appeared before me in order to waive her right to prosecution by
26 indictment and to plead guilty to count one of the information. The defendant
27 agreed to proceed by way of information and waived her right to be charged with an
28 indictment. The defendant informed that she understood the charges which she

1 CRIMINAL 08-0074 (JAG)

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3 faced and was informed of her constitutional right to be charged in an indictment,
 4 a right which she could waive if she consents to being charged by information of the
 5 United States Attorney. She noted that she had discussed this with her attorney and
 6 acknowledged that no threats or promises had been made to her to waive indictment
 7 and proceed by way of information.

8 In open court the defendant was questioned as to the purpose of the hearing
 9 being held. The defendant responded that the purpose of the hearing was to accept
 10 responsibility or plead guilty. The defendant was advised of her right to have all
 11 proceedings, including the change of plea hearing, before a United States district
 12 judge. She was given notice of: (a) the nature and purpose of the hearing; (b) the
 13 fact that all inquiries were to be conducted under oath and that it was expected that
 14 her answers would be truthful; and (c) her right to have the change of plea
 15 proceedings presided over by a district judge instead of a magistrate judge. The
 16 defendant was also explained the differences between the appointment and functions
 17 of the two. The defendant consented to proceed before this magistrate judge.

18 III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

19 A. Compliance With Requirements Rule 11(c)(1)

20 Rule 11 of the Federal Rules of Criminal Procedure governs the
 21 acceptance of guilty pleas to federal criminal violations. Pursuant to
 22 Rule 11, in order for a plea of guilty to constitute a valid waiver of the
 23 defendant's right to trial, guilty pleas must be knowing and voluntary:
 24 "Rule 11 was intended to ensure that a defendant who pleads guilty
 25 does so with an 'understanding of the nature of the charge and
 consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4
 26 (1st Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467
 (1969)). [There are three core concerns in these proceedings]: 1)
 absence of coercion; 2) understanding of the charges; and 3) knowledge
 of the consequences of the guilty plea. United States v. Cotal-Crespo, 47
 F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1st
 Cir. 1991)).

27 United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).
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1 CRIMINAL 08-0074 (JAG)

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In response to further questioning, defendant was explained and she understood that if convicted on count one of the information, defendant may be sentenced to a fine not to exceed \$250,000 and a term of imprisonment of not more than three years. Additionally, the court may impose a term of supervised release of not more than three years.

The court must impose a mandatory penalty assessment of \$100, per offense, to be deposited in the Crime Victim Fund, pursuant 18 U.S.C. § 3013(a).

Defendant was advised that the ultimate sentence was a matter solely for the court to decide in its discretion and that, even if the maximum imprisonment term and fine were to be imposed upon her, she later could not withdraw her guilty plea if she was unhappy with the sentence of the court. The defendant understood this.

Defendant was explained what the supervised release term means. It was emphasized that cooperation with the United States Probation officer would assist the court in reaching a fair sentence.

The defendant is aware that the court may order her to pay a fine sufficient to reimburse the government for the costs of any imprisonment, probation or supervised release.

Emphasis was made on the fact that at this stage, no prediction or promises as to the sentence to be imposed could be made by anyone. Defendant responded to questions in that no promises, threats, inducements or predictions as to what sentence will be imposed have been made to her.

B. Admonishment of Constitutional Rights

To assure defendant's understanding and awareness of her rights, defendant was advised of her right:

1 CRIMINAL 08-0074 (JAG)

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1. To remain silent at trial and be presumed innocent, since it is the government who has the burden of proving her guilt beyond a reasonable doubt.

2. To testify or not to testify at trial, and that no comment could be made by the prosecution in relation to her decision not to testify.

3. To a speedy trial before a district judge and a jury, at which she would be entitled to see and cross examine the government witnesses, present evidence on her behalf, and challenge the government's evidence.

4. To have a unanimous verdict rendered by a jury of twelve persons which would have to be convinced of defendant's guilt beyond a reasonable doubt by means of competent evidence.

5. To use the subpoena power of the court to compel the attendance of witnesses.

Upon listening to the defendant's responses, observing her demeanor and her speaking with her attorney, that to the best of counsel's belief defendant had fully understood her rights, it is determined that defendant is aware of her constitutional rights.

C. Consequences of Pleading Guilty

Upon advising defendant of her constitutional rights, she was further advised of the consequences of pleading guilty. Specifically, defendant was advised that by pleading guilty and upon having her guilty plea accepted by the court, she will be giving up the above rights and would be convicted solely on her statement that she is guilty.

Furthermore, the defendant was admonished of the fact that by pleading guilty she would not be allowed later on to withdraw her plea because she eventually might disagree with the sentence imposed, and that when she were under supervised

1 CRIMINAL 08-0074 (JAG)

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release, and upon violating the conditions of such release, that privilege could be revoked and she could be required to serve an additional term of imprisonment. She was also explained that parole has been abolished.

D. Plea Agreement

The parties have entered into a written plea agreement that, upon being signed by the government, defense attorney and defendant, was filed and made part of the record. Defendant was clearly warned and recognized having understood that:

1. The plea agreement is not binding upon the sentencing court.

2. The plea agreement is an "agreement" between the defendant, defense attorney and the attorney for the government which is presented as a recommendation to the court in regards to the applicable sentencing adjustments and guidelines, which are advisory.

3. The agreement provides a sentencing recommendation and/or anticipated sentencing guideline computation, that can be either accepted or rejected by the sentencing court.

4. In spite of the plea agreement and any sentencing recommendation contained therein, the sentencing court retains full discretion to reject such plea agreement and impose any sentence up to the possible maximum penalty prescribed by statute.

Defendant acknowledged having understood this explanation.

E. Government's Evidence (Basis in Fact)

The government presented a proffer of its evidence with which the defendant basically concurred.

Accordingly, it is determined that there is a basis in fact and evidence to establish all elements of the offense charged.

1 CRIMINAL 08-0074 (JAG)

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3 F. Voluntariness

4 The defendant accepted that no leniency had been promised, no threats had
5 been made to induce her to plead guilty and that she did not feel pressured to plead
6 guilty. She came to the hearing for the purpose of pleading guilty and listened
7 attentively as the prosecutor outlined the facts which it would prove if the case had
8 proceeded to trial.

9 IV. Conclusion

10 The defendant, by consent, has appeared before me pursuant to Rule 11,
11 Federal Rules of Criminal Procedure, and has entered a plea of guilty as to count one
12 of the information.

13 After cautioning and examining the defendant under oath and in open court,
14 concerning each of the subject matters mentioned in Rule 11, as described in the
15 preceding sections, I find that the defendant Magda Rosado-García is competent to
16 enter this guilty plea, is aware of the nature of the offense charged and the
17 maximum statutory penalties that the same carries, understands that the charge is
18 supported by the government's evidence, has admitted to every element of the
19 offense charged, and has done so in an intelligent and voluntary manner with full
20 knowledge of the consequences of her guilty plea.

21 Therefore, I recommend that the court accept the guilty plea of the defendant
22 and that the defendant be adjudged guilty as to count one of the information. Upon
23 sentencing, the government will request the dismissal of criminal case 07-0413
24 (JAG) as to her.

25 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B)
26 and Rule 72(d) of the Local Rules of Court. Any objections to the same must be
27 specific and must be filed with the Clerk of Court within five (5) days of its receipt.
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1 CRIMINAL 08-0074 (JAG)

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3 Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific
4 objections to the report and recommendation is a waiver of the right to review by the
5 district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

6 At San Juan, Puerto Rico, this 13th day of March, 2008.

8 S/ JUSTO ARENAS
9 Chief United States Magistrate Judge